

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MITCHELL DANYELL BANKS,)	
)	
Petitioner,)	
)	1:21-cr-344-1
v.)	1:24-cv-962
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

This matter is before the court for review of the Order and Recommendation ("Recommendation") filed on November 21, 2024, by the United States Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 148.) In the Recommendation, the Magistrate Judge construes Petitioner's filing, (Doc. 146), as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255, however, the motion cannot be further processed as it is not on the proper § 2255 forms. The Recommendation was served on the parties in this action on November 21, 2024. (Doc. 149.) Petitioner timely filed objections, (see Docs. 150, 151, 152), to the Recommendation.¹

¹ The bulk of Petitioner's objections relate to the denial to provide Petitioner access to Grand Jury materials. (See Docs. 150, 151, 152.) The Magistrate Judge addressed that request by way of an order, (see Doc. 148 at 2-3). While an order is reviewed under a clearly erroneous standard, this court finds no error in that order by either standard of review, de novo or clearly erroneous.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge. . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

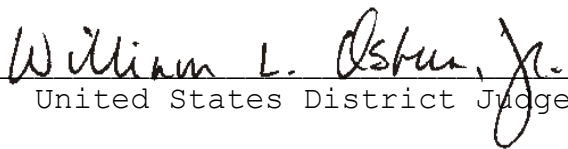
This court has appropriately reviewed the portions of the Recommendation to which the objections were made and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 148), is **ADOPTED. IT IS FURTHER ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE** to Petitioner promptly filing a corrected motion on the proper § 2255 forms.

The court further finds there is no substantial showing of the denial of a constitutional right affecting the conviction nor a debatable procedural ruling, therefore a certificate of appealability is not issued.

A Judgment dismissing this action will be entered contemporaneously with this Order.

This the 3rd day of January, 2025.


United States District Judge